

**61-1-18.5. Securities Commission -- Transition.**

- (1) (a) There is created a Securities Commission.
- (b) The division shall provide staffing to the commission.
- (2) (a) The commission shall:
  - (i) formulate and make recommendations to the director regarding policy and budgetary matters;
  - (ii) submit recommendations regarding registration requirements;
  - (iii) formulate and make recommendations to the director regarding the establishment of reasonable fees;
  - (iv) act in an advisory capacity to the director with respect to the exercise of the director's duties, powers, and responsibilities;
  - (v) conduct an administrative hearing under this chapter that is not:
    - (A) delegated by the commission to an administrative law judge or the division relating to a violation of this chapter; or
    - (B) expressly delegated to the division under this chapter;
  - (vi) except as provided in Subsection (2)(b), and consistent with Section 61-1-20, impose a sanction as provided in this chapter;
  - (vii) review rules made by the division for purposes of concurrence in accordance with Section 61-1-24; and
  - (viii) perform other duties as this chapter provides.
- (b) (i) The commission may delegate to the division the authority to impose a sanction under this chapter.
- (ii) If under Subsection (2)(b)(i) the commission delegates to the division the authority to impose a sanction, a person who is subject to the sanction may petition the commission for review of the sanction.
- (iii) A person who is sanctioned by the division in accordance with this Subsection (2)(b) may seek agency review by the executive director only after the commission reviews the division's action.
- (3) (a) The governor shall appoint five members to the commission with the consent of the Senate as follows:
  - (i) two members from the securities brokerage community:
    - (A) who are not from the same broker-dealer or affiliate; and
    - (B) who have at least five years prior experience in securities matters;
  - (ii) one member from the securities section of the Utah State Bar:
    - (A) whose practice primarily involves:
      - (I) corporate securities; or
      - (II) representation of plaintiffs in securities cases;
    - (B) who does not routinely represent clients involved in:
      - (I) civil or administrative litigation with the division; or
      - (II) criminal cases brought under this chapter; and
    - (C) who has at least five years prior experience in securities matters;
  - (iii) one member who is an officer or director of a business entity not subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934; and
  - (iv) one member from the public at large who has no active participation in the securities business.

(b) A member may not serve more than two consecutive terms.

(4) (a) Except as required by Subsection (4)(b) and subject to Subsection (4)(c), as terms of current members expire, the governor shall appoint a new member or reappointed member to a four-year term.

(b) Notwithstanding Subsection (4)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of commission members are staggered so that approximately half of the commission is appointed every two years.

(c) For purposes of making an appointment to the commission, the governor:

(i) shall as of May 12, 2009:

(A) appoint all five members of the commission; and

(B) stagger the terms of the five members of the commission to comply with Subsection (4)(b); and

(ii) may not consider the commission an extension of the previous Securities Advisory Board.

(d) When a vacancy occurs in the membership for any reason, the governor shall appoint a replacement member for the unexpired term.

(e) A member shall serve until the member's respective successor is appointed and qualified.

(f) The commission shall annually select one member to serve as chair of the commission.

(5) (a) The commission shall meet:

(i) at least quarterly on a regular date to be fixed by the commission; and

(ii) at such other times at the call of:

(A) the director; or

(B) any two members of the commission.

(b) A majority of the commission shall constitute a quorum for the transaction of business.

(c) An action of the commission requires a vote of a majority of members present.

(6) A member of the commission shall, by sworn and written statement filed with the Department of Commerce and the lieutenant governor, disclose any position of employment or ownership interest that the member has with respect to an entity or business subject to the jurisdiction of the division or commission. This statement shall be filed upon appointment and must be appropriately amended whenever significant changes occur in matters covered by the statement.

(7) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(8) (a) A rule or form made by the division under this section that is in effect on May 11, 2009, is considered to have been concurred with by the commission as of May 12, 2009, until the commission acts on the rule or form.

(b) For a civil or administrative action pending under this chapter as of May 12,

2009, brought under the authority of division under this chapter as in effect May 11, 2009, that may be brought only by the commission under this chapter as in effect on May 12, 2009:

- (i) the action shall be considered brought by the commission; and
- (ii) the commission may take any act authorized under this chapter regarding that action.

Amended by Chapter 319, 2011 General Session